

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NORMAN WANG,

Plaintiff,

v.

UNIVERSITY OF PITTSBURGH, UNIVERSITY
OF PITTSBURGH MEDICAL CENTER,
UNIVERSITY OF PITTSBURGH PHYSICIANS,
SAMIR SABA, MARK GLADWIN, and KATHRYN
BERLACHER,

Defendants.

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: Civil Action No. 2:20-cv-01952
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: Judge Marilyn J. Horan
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**MOTION TO DISMISS COUNT I OF THE SECOND
AMENDED COMPLAINT ON BEHALF OF DEFENDANTS
SAMIR SABA, MARK GLADWIN AND KATHRYN BERLACHER**

Defendants Samir Saba, M.D., Mark Gladwin, M.D., and Kathryn Berlacher, M.D. (collectively, “Individual UPMC Defendants”), through their undersigned counsel, move pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss with prejudice Count I of the Second Amended Complaint [ECF No. 78], filed by Plaintiff Norman Wang. This motion should be granted because Dr. Wang has failed to state claims upon which relief may be granted for the reasons stated in the numbered paragraphs below.

1. Rule 12(b)(6) requires dismissal of a complaint for “failure to state a claim upon which relief can be granted.”

2. Dismissal is appropriate if a complaint does not allege “enough facts to state a claim to relief that is plausible on its face.” *Philips v. County of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008) (citing *Bell v. Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

3. Dr. Wang's section 1983 claim in Count I against the Individual UPMC Defendants must be dismissed because he has not adequately alleged that the Individual UPMC Defendants acted under color of state law. *Untracht v. Fikri*, 454 F. Supp. 2d 289, 319-21 (W.D. Pa. 2006).

WHEREFORE, for the reasons stated more fully in their supporting Brief, the Individual UPMC Defendants respectfully request the dismissal with prejudice Count I of Wang's Second Amended Complaint, and such other and further relief as the Court deems appropriate.

Respectfully submitted,

s/ Terrence H. Murphy

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Counsel for Defendants

Samir Saba, Mark Gladwin and Kathryn

Berlacher

Dated: January 25, 2022

CERTIFICATE OF CONFERRAL

I hereby certify that Defendants Samir Saba, Mark Gladwin and Kathryn Berlacher, through counsel, met and conferred with Plaintiff's counsel on January 21, 2022 (after Plaintiff's filing of a Second Amended Complaint), to determine whether pleading deficiencies identified in the instant Motion to Dismiss Count I of the Second Amended Complaint may be curable by amendment, as required by Section 1(g) of Judge Marilyn J. Horan's Standing Order and Procedures on Civil Motion Practice. The Parties were unable to reach an agreement that would avoid filing of this Motion.

s/ Terrence H. Murphy

Terrence H. Murphy

Dated: January 25, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January 2022 a true and correct copy of the foregoing Motion to Dismiss Count I of the Second Amended Complaint on Behalf of Defendants Samir Saba, Mark Gladwin and Kathryn Berlacher was filed, using the Western District of Pennsylvania's CM/ECF system, through which this document is available for viewing and downloading, causing a notice of electronic filing to be served upon all counsel of record.

s/ Terrence H. Murphy

Terrence H. Murphy